

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION IX

99-01

5203-00001

SDMS# 47831

75 Hawthorne Street San Francisco, Ca. 94105

November 12, 1998

Jerry Marquis Corporate Development, Inc. 1101 Standiford Ave., #B-6 Modesto, CA 95350 Judith Mitchell
Fidelity National Title
345 W. F Street
Oakdale, CA 95361

Ramon Cercas 636 South Conejo Avenue Modesto, CA 95354

Re:

Potential Release of CERCLA Lien; 12501 Valley Home Road, Oakdale, CA

Dear Messers. Marquis and Cercas and Ms. Mitchell:

Enclosed for your files is a copy of the fully executed agreement concerning the above-captioned matter. I am in the process of taking the necessary steps to begin the 30-day public comment period required by Section 122(i) of CERCLA. We do not expect any opposition to this agreement.

In any event, the agreement will be effective after the 30-day public comment period. According to the terms of the agreement, the payment of the \$12,000 is required to be made within 30 days of the Effective Date of this agreement. EPA will notify you when the 30-day public comment period has expired and the date on which the Order becomes effective. Once payment if received, EPA will prepare and file a Release of Lien with the appropriate officials in the Stanislaus County Recorder's office.

Thank you for your respective efforts in this matter. Should you have any questions in this regard, please do not hesitate to contact me. I can be reached at (415) 744-1336.

Sincerely,

David Rabbino

Assistant Regional Counsel

cc: William Weis, EPA

1 IN THE MATTER OF:
2 Freelove Valley Home
Meth Lab Superfund Site,
3 Oakdale, California
4 Ramon Cercas,
5 Settling Party

AGREEMENT FOR RECOVERY OF PAST RESPONSE COSTS

U.S. EPA Region IX CERCLA Docket No. 99-01

PROCEEDING UNDER SECTION 122(h)(1) OF CERCLA 42 U.S.C. § 9622(h)(1)

I. JURISDICTION

- 1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 6922(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D, and redelegated by the Regional Administrator to the Superfund Division Branch Chiefs by Region 9 Delegation number 1290.20.
- 2. This Agreement is made and entered into by EPA and Ramon Cercas (Settling Party). Settling Party consents to and will not contest EPA's jurisdiction to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

- 3. This Agreement concerns the Freelove Valley Home Meth Lab Superfund Site (Site), located at 12501 Valley Home Road, Oakdale, Stanislaus County, California. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- 4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C.

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§ 9604. The Site was a clandestine drug lab. On May 6, 1997, EPA initiated a removal action at the Site in response to documented releases or threatened releases of red phosphorus, 4 hydrogen chloride compressed gas, freon, caustic liquids, various flammable liquids, and other oxidizing substances at the Site.

- In performing this response action, EPA incurred approximately \$27,925.13 in response costs at or in connection with the Site.
- EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred at or in connection with the Site.
- 7. The Regional Administrator of EPA Region IX, or his/her delegatee, has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed \$500,000, excluding interest.
- 8. On or about September 1998, the EPA filed a lien pursuant to Section 107(1) of CERCLA, 42 U.S.C. § 9607(1), to secure payment of all costs incurred by the United States in connection with the Site.
- On or about September 2, 1998, EPA was informed that Settling Party had received an offer to purchase the Site. sales price was stated to be \$230,000. It was represented to EPA that of this amount, approximately \$13,000 would remain after the sales proceeds were distributed to Settling Party's other creditors.
- 10. EPA and Settling Party desires to resolve Settling Party's alleged civil liability for Past Response Costs without

litigation and without the admission or adjudication of any issue of fact or law.

III. PARTIES BOUND

11. This Agreement shall be binding upon EPA and upon Settling Party and his heirs, successors, and assigns. Any change in ownership or other legal status of the Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Party's responsibilities under this Agreement. The Settling Party certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

IV. <u>DEFINITIONS</u>

- 12. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:
- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.
- b. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.
- c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall

run until the close of business of the next working day.

- d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.
- e. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1st of each year, in accordance with 42 U.S.C. § 9607(a).
- f. "Paragraph" shall mean a portion of this Agreement identified by an arabic numeral or a lower case letter.
- g. "Parties" shall mean EPA and the Settling Party, Ramon Cercas.
- h. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or any entity working on EPA's behalf, has paid at or in connection with the Site through September 30, 1998, plus accrued Interest on all such costs through such date.
- i. "Section" shall mean a portion of this Agreement identified by a roman numeral.
 - j. "Settling Party" shall mean Ramon Cercas.
- k. "Site" shall mean the Freelove Valley Home Meth Lab Superfund site, which is comprised of all property located at 12501 Valley Home Road, Oakdale, California.
- 1. "United States" shall mean the United States of America, including it departments, agencies and instrumentalities.

V. REIMBURSEMENT OF RESPONSE COSTS

13. Within 30 days of the effective date of this Agreement, the Settling Party shall direct the Fidelity National title Company, presently acting as escrow agent with regard to the sale of the Site property, to pay to the EPA Hazardous Substance Superfund \$12,000 in reimbursement of Past Response Costs, plus an additional sum for Interest on that amount calculated from the date set forth in the definition of Past Response Costs through the date of payment.

14. Payment shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number 09-Z5, and the EPA docket number for this action, and shall be sent to:

EPA Superfund - Region 9 ATTN. Superfund Accounting P.O. Box 360863M Pittsburgh, PA 15251

15. At the time of payment, the Settling Party shall send notice that such payment has been made to:

David A. Rabbino (RC-3)
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

William J. Weis, III (SFD-6) U.S. Environmental Protection Agency Region IX 75 Hawthorne Street San Francisco, CA 94105

- 16. In the event that the payment required by Paragraph 13 is not made when due, interest shall continue to accrue on the unpaid balance through the date of payment.
- 17. If any amounts due to EPA under Paragraph 13 are not paid by the required date, Settling Parties shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 16, \$100 per day that such payment is late.
- 18. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall made in accordance with Paragraphs 14 and 15.
- 19. Penalties shall accrue as provided above regardless of whether EPA has notified the Settling Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due, or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.
- 20. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Party's failure to comply with the requirements of this Agreement, if Settling Party fails or refuses to comply with any term or condition of this Agreement, he shall be subject to enforcement action

pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

21. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement.

VII. COVENANT NOT TO SUE BY EPA

22. Except as specifically provided in Paragraph 23
(Reservations of Rights by EPA), EPA covenants not to sue
Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. §
9607(a), to recover Past Response Costs. This covenant shall
take effect upon receipt by EPA of all amounts required by
Section V (Reimbursement of Response Costs) and Section VI,
Paragraphs 16 (Interest on Late Payments) and 17 (Stipulated
Penalty for Late Payment). This covenant not to sue is
conditioned upon the satisfactory performance by Settling Parties
of their obligations under this Agreement. This covenant not to
sue extends only to Settling Party and does not extend to any
other person.

VIII. RESERVATIONS OF RIGHTS BY EPA

23. The covenant not to sue by EPA set forth in Paragraph 22 does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Party with respect to all other matters, including but not limited to:

- a. liability for failure of Settling Party to meet a requirement of this Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
 - d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.
- 24. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

IX. COVENANT NOT TO SUE BY SETTLING PARTY

- 25. Settling Party agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Agreement, including but not limited to:
- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

- b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred; and
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.
- 26. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

- 27. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. EPA and Settling Party reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which he may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.
- 28. EPA and Settling Party agrees that the actions undertaken by Settling Party in accordance with this Agreement do not constitute an admission of any liability by Settling Party. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section II of this Agreement.
- 29. The EPA agrees that Settling Party is entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4),

for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are Past Response Costs.

- 30. Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.
- 31. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Paragraph 22.

XI. RETENTION OF RECORDS

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- 32. Until five (5) years after the effective date of this Agreement, Settling Party shall preserve and retain all records and documents now in his possession or control, or which come into his possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions conducted and to be conducted at the Site, regardless of any document retention policy to the contrary.
- 33. After the conclusion of the document retention period in the preceding paragraph, Settling Party shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Settling Party shall deliver any such records or documents to EPA. Settling Party may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege, he shall provide EPA with the following: the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other judicial or administrative settlement with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of

a document, the document shall be provided to EPA in redacted form to mask the privileged information only. Settling Party shall retain all records and documents that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor.

- 34. By signing this Agreement, Settling Party certifies individually that, to the best of his knowledge and belief, he has:
- a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site:
- b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Party regarding the Site; and
- c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XII. NOTICES AND SUBMISSIONS

35. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA and Settling Party.

As to EPA:

David A. Rabbino (RC-3)
Assistant Regional Counsel

12 U.S. EPA

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75 Hawthorne Street

13 San Francisco, CA 94105

14 William J. Weis, III

Investigations and Enforcement Case Manager

15 U.S. EPĀ

75 Hawthorne Street

16 San Francisco, CA 94105

As to Settling Party:

Ramon Cercas 636 South Conejo Modesto, CA 95354

XIII. INTEGRATION[/APPENDICES]

36. This Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement.

XIV. PUBLIC COMMENT

37. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

XV. EFFECTIVE DATE

38. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 37 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

IT IS SO AGREED:

U.S. Environmental Protection Agency

Keith Takata

Director, Superfund Program,

Region IX

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2	THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the
3	matter of Freelove Valley Home Meth Lab Superfund Site, EPA
4	Region IX CERCLA Docket No. 99-01, relating to the Freelove
5	Valley Home Meth Lab Superfund Site, located at 12501 Valley Home
6	Road, Oakdale, California.:
7	
8	FOR SETTLING PARTY: Lower Conton Manual G Centry
9	636 South Conejo Avenue
10	Modesto, CA 95354
11	By:
12	[Name] [Date]
13	[Name]
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onda L. Waddell, a Notary	
Name and Title of Officer (e.g., "Jane Doe, Note	7 Public Iry Public")
as and Manuela Cercas	
Name(s) of Signer(s) Deprisonally known to me Deprived to me on the basis evidence	of satisfactory
subscribed to the within in acknowledged to me that he/ebs the same in this the capacity (ies), and that by signature(s) on the instrument the entity upon behalf of which	strument and they executed in authorized bix/bex/thei ne person(s), on the person(s)
Khonda L. Wa	ddell
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or Recovery of Past Respo	nse Costs
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